

SENATE BILL 2627
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 41, Chapter 21, relative to the filing of lawsuits by prison inmates

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 41, Chapter 21, is amended by adding the following as a new part:

Section 1. In this part:

- (a) "Claim" means a cause of action governed by this part.
- (b) "Commissioner" means the commissioner of correction.
- (b) "Department" means the department of correction.
- (c) "Inmate" means a person housed in a facility operated by the department or housed in a county jail.
- (d) "Trust account" means an inmate's trust account administered by the department or by a county jail.

Section 2. This part applies only to a claim brought by an inmate in general sessions or a trial level court of record in which an affidavit of inability to pay costs is filed with the claim by the inmate.

Section 3. Except as otherwise provided by law, an action that accrued while the plaintiff inmate was housed in a facility operated by the department shall be brought in the county in which the facility is located.

Section 4. (a) A court may dismiss a claim filed by an inmate, either before or after service of process on the defendant, if the court finds that:

- (1) the allegation of poverty in the inmate's affidavit is false; or

(2) the claim is frivolous or malicious.

(b) In determining whether a claim is frivolous or malicious under subsection (a), the court may consider whether or not:

(1) the claim has a chance of success;

(2) the claim has a basis in law and in fact; and

(3) the claim is substantially similar to a previous claim filed by the inmate in that the present claim arises from the same operative facts.

(c) The court may hold a hearing to determine whether the allegation of poverty filed with the claim is false or whether the claim is frivolous or malicious. This hearing may be held before or after service of process on the defendant, and may be held on motion of the court, a party to the claim, or by any officer of the court.

(d) On the filing of a motion described under subsection (c), the court shall suspend all discovery relating to the claim pending the outcome of the hearing.

Section 5. Any inmate who files a claim with an affidavit of inability to pay costs shall file a separate affidavit with the following information:

(a) a complete list of every lawsuit or claim previously filed by the inmate, without regard to whether the inmate was incarcerated at the time any claim or action was filed; and

(b) for each claim or action listed in subsection (a):

(1) the operative facts for which relief was sought;

(2) the case name, case number and court in which the suit or claim was filed;

(3) the legal theory on which the relief sought was based;

(4) the identification of each party named in the action; and

(5) the final result of the action, including dismissal as frivolous or malicious under this part or otherwise.

(c) If the affidavit filed under this section states that a previous suit was dismissed as frivolous or malicious, the affidavit must state the date of the final order affirming the dismissal.

(d) The affidavit must be accompanied by a current certified copy of the inmate's trust account statement.

Section 6. (a) An inmate who files a claim that is subject to review by the grievance committee established by the department shall file with the court an affidavit stating the date that the grievance was filed and the date the final decision was received by the inmate with a copy of the final decision from the grievance committee.

(b) The court shall dismiss the claim if the inmate fails to file the claim before the thirty-first (31st) day after the date the inmate receives the final decision from the grievance committee.

(c) If a claim is filed before the grievance procedure is complete, the court shall stay the proceeding with respect to the claim for a period not to exceed ninety (90) days to permit completion of the grievance procedure.

Section 7. (a) The court shall order an inmate who has filed a frivolous or malicious claim to pay filing fees, court costs and any other related expenses in accordance with this section. The clerk of the court shall mail a copy of the court's order to the department or the county jail, as appropriate.

(b) Pursuant to the court's order, the inmate shall be required to pay an amount equal to twenty percent (20%) of the preceding six (6) months' deposits and interest, if any, accruing to the inmate's trust account.

(c) In each month following the month in which the first payment is made under subsection (b), the inmate shall pay an amount equal to ten percent (10%) of that month's deposits and interest for the trust account.

Payments under this subsection shall continue from month to month until the total amount of costs listed in the court's order in subsection (a) are paid or until the inmate is released from confinement.

(d) On receipt of a copy of an order issued under subsection (a), the department or county jail shall withdraw money from the trust account in accordance with subsections (b) and (c). The department or county jail shall forward the collected money to the clerk of the court on a monthly basis. If the amount to be forwarded to a court clerk under this section in a month is less than ten dollars (\$10.00), the department or county jail shall hold the money collected in a separate escrow account and shall forward the money to the court clerk when the total amount equals at least ten dollars (\$10.00).

(e) With the filing of each claim, the inmate shall file a current certified copy of the inmate's trust account statement with the court. The statement shall reflect the balance of the account at the time the complaint is filed and activity in the account during the six (6) months preceding the date on which the complaint is filed. The court may request the department or county jail to furnish the information required under this subsection.

(f) An inmate may authorize payment to the court clerk in addition to those payments required by this section.

(g) At the time the inmate is released from confinement, the court may enter any additional orders requiring payment of filing fees, court costs, and any other expenses relating to past claims filed by the inmate.

(h) The court may dismiss any claim if an inmate fails to pay filing fees, court costs or any other costs assessed under this section.

(l) An inmate may not avoid the fees and costs assessed under this section by nonsuiting a party or by voluntarily dismissing the action.

Section 8. (a) An order of a court issued under subsections 7(a) or (g) may include the expenses described by subsection 7(b) if the court finds that the inmate has previously filed an action in a general sessions or trial level court of record and a final order has been issued that affirms that the action was dismissed as frivolous or malicious, or for other reasons.

(b) Expenses under subsection (b) may include any cost incurred by the court, the department, or the county jail in connection with the claim and not otherwise charged to the inmate under Section 7, including, but not limited to, the expenses of service of process, postage and transportation, housing, or medical care incurred in connection with the appearance of the inmate in the court for any proceeding relating to the inmate's claim.

Section 9. The court may hold a hearing under this part at a county jail or a facility operated by the department or may conduct the hearing with video communications technology that permits the court to see and hear the inmate and that permits the inmate to see and hear the court and any other witnesses.

Section 10. (a) The court may request a person with an admissible document or admissible testimony relevant to the subject matter of the hearing to submit a copy of the document or an affidavit stating the substance of the testimony. An affidavit submitted under this section must be made under oath. A person submitting an affidavit or document under this section is not required to appear at the hearing.

(b) A copy of a document submitted under this section must be accompanied by a certification executed under oath by an appropriate custodian of the record stating that the copy is correct and any other matter relating to the admissibility of the document that the court may require.

(c) The court shall provide the inmate a copy of each affidavit or document not later than twenty-four (24) hours before the time at which the hearing is to begin.

Section 11. (a) The court may enter an order dismissing the entire claim or portion of the claim. If a portion of the claim is dismissed, the court shall designate the issues and defendants on which the claim may proceed, subject to the provisions of Sections 7 and 8.

(b) An order under this section is not subject to an interlocutory appeal by the inmate.

Section 12. (a) Except as provided by subsection (b), on notice of assessment of any fees, taxes, costs and expenses under this part, a clerk of a court may not accept for filing another claim by the same inmate until such prior fees, taxes, costs and other expenses are paid in full.

(b) A court may allow an inmate who has not paid any costs or expenses assessed against the inmate to file a claim for injunctive relief seeking to enjoin an act or failure to act that creates a substantial threat of irreparable injury or serious physical harm to the inmate.

Section 13. In order to implement this part, a court may develop for its use a questionnaire to be completed and filed by the inmate.

Section 14. Notwithstanding any provision of law to the contrary, this part may not be modified nor repealed by any rule promulgated or adopted by the supreme court.

Section 15. This part does not authorize a claim for preventive relief against the department, an employee of the department, or of any other agency, agent, employee or officer of this state if the claim is brought by a person housed in a facility operated by the department and the claim accrued while the person was housed in the facility.

Section 16. (a) The commissioner of correction shall forfeit an inmate's good conduct sentence reduction credits in the amount specified by subdivision (b) of this section on:

(1) receipt by the department of a certified copy of a final order of a state or federal court that dismisses as frivolous or malicious a claim or lawsuit filed by an inmate while the inmate was in the custody of the department; and

(2) a determination that the department has, on one (1) or more occasions, received a certified copy of a final order of a state or federal court dismissing as frivolous or malicious a claim or lawsuit filed previously by the inmate while the inmate was in the custody of the department.

(b) On receipt of a final order described by subdivision (a) (1), the commissioner shall forfeit:

(1) Sixty (60) days of an inmate's accrued good conduct sentence reduction credits if the department has previously received one (1) final order described by subsection (a) (2);

(2) One hundred twenty (120) days of an inmate's accrued good conduct sentence reduction credits if the department has previously received two (2) final orders described by subsection (a)(2); or

(3) One hundred eighty (180) days of an inmate's accrued good conduct sentence reduction credits if the department has previously received three (3) final orders described by subsection (a)(2).

(c) The commissioner may not restore good conduct sentence reduction credits forfeited under this section for any reason.

Section 17. (a) The department shall develop and maintain a system for the resolution of grievances by inmates housed in facilities operated by the department that

qualifies for certification under Title 42 U.S.C. Section 1997e, and the department shall obtain certification under that section. A remedy provided by the grievance system is the exclusive administrative remedy available to an inmate for a claim for relief that arises while the inmate is housed in a facility operated by the department, other than a remedy provided by writ of habeas corpus challenging the validity of an action occurring before the delivery of the inmate to the department.

(b) The grievance system must provide procedures for an inmate to identify evidence to substantiate the inmate's claim and for an inmate to receive copies of all formal written responses to the inmate's grievance.

SECTION 2. Notwithstanding any provision of law to the contrary, the commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

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